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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1931.

WILLIAM J. STRATTON, as Secretary of State of the State of Illinois,
Appellant,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation,
Appellee.

No. 178.

Appeal from Statutory District Court of the United States for the Southern District of Illinois, Southern Division.

APPELLEE'S ADDITIONAL BRIEF AND ARGUMENT COVERING QUESTIONS OF FEDERAL AND EQUITY JURISDICTION.

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ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

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tion against which a tax is assessed, notifying such corporation of the amount of the franchise tax assessed against it for the year next ensuing, commencing on July first, and the amount found by the Secretary of State to be due upon an increase of capital stock of a foreign corporation represented in this state, and that objections, if any, to such assessment will be heard by the officer making such assessments, upon request by corporation on a day not later than the twenty-fifth day of June, provided upon proper showing to the Secretary of State that the failure to request a hearing before that date was due to the absence or sickness on the part of some officer of the corporation, the Secretary of State may grant a hearing after that date. Such notice shall further state that the tax herein assessed is payable to the officer making the assessment on July first after the date of the notice. The notice required by this section shall be mailed to the corporation addressed to its post-office address, as shown by the records in the office of the Secretary of State. A failure to receive the notice mentioned in this section shall not relieve a corporation of the obligation to pay the annual franchise taxes nor shall it invalidate the assessment of the tax.

As amended by L. 1927, p. 354, approved and in force May 12, 1927.

Sec. 113. **Collection of Assessment.**—It shall be the duty of the officer making the assessment to collect the same.

Sec. 114. **Delinquent Corporations—Penalty.**—If the franchise tax assessed in accordance with the provisions of this act shall not be paid on or before the thirty-first day of July, it shall be deemed to be delinquent, and there

shall be added a penalty of five per cent for each month or part of month that the same is delinquent, commencing with the month of August.

Sec. 115. **Franchise Taxes and Penalties a Prior Lien—Record of Taxes, Penalties and Costs.**—The franchise taxes assessed under this act, together with penalties, interest and costs that shall accrue thereon, shall be a prior and first lien on the real and personal property of the corporation from and including the first day of July of the year when such franchise taxes should have been paid until the same have been paid.

The Secretary of State shall make and keep in his office a record showing the name of each corporation against which a franchise tax has been assessed, the amount assessed against each corporation, together with penalties and costs, if any, and the date when paid, and a notation of any and all proceedings taken for the collection of the franchise tax.

Sec. 116. **Collection of Delinquent Franchise Taxes and Penalties—Procedure.**—In case any corporation shall fail, refuse or neglect to pay the franchise tax assessed against it on or before the thirty-first day of July, the Secretary of State shall issue a warrant, under his hand and official seal, directed to the Sheriff of any county in the state, commanding him to collect and return such franchise tax and penalties. It shall be the duty of the Sheriff receiving such warrant to levy upon and sell the personal property of such corporation to satisfy such franchise tax and penalties, together with the legal costs and charges of such Sheriff. Upon the receipt of such warrant the Sheriff shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in

Equity jurisdiction is claimed because of threatened irreparable injuries to appellee's property rights, there being no adequate remedy at law (Rec., pp. 9, 11, 12).

After describing the tax sought to be imposed and the grounds by reason of which appellee's constitutional rights were infringed upon, it is averred in the bill of complaint:

> "That the predecessor in office of the defendant William J. Stratton, to wit, Louis L. Emmerson, as Secretary of State of the State of Illinois, did, **over the objection and protest** of the plaintiff, assess said franchise tax or license fee for the year July 1, 1927, to June 30, 1928, at the sum of $1,000.00; that, on being advised of said assessment, plaintiff notified said Secretary of State that it objected to the amount of said tax as fixed by him and requested a hearing in regard thereto, and that said Secretary of State neglected, failed and refused to fix a time and place for said hearing, and that plaintiff's agent called at the office of said Secretary of State and explained fully to his assistant in charge of the assessment of franchise taxes the contention of plaintiff, by virtue of which a franchise tax for the year July 1, 1927, to June 30, 1928, in an amount not exceeding $135.21, was due and that said assistant, on behalf of and with the authority of said Louis L. Emmerson, insisted that a franchise tax of $1,000.00 was due, and refused to change the amount of said tax as assessed, and informed plaintiff's agent of the purpose of said Secretary of State to insist upon the payment of the tax as so assessed, and in the event of nonpayment to enforce all of the penalties and for-

feitures provided by law in the event of the nonpayment of such franchise tax" (Rec., p. 8); and

"Plaintiff further shows that there is no method provided by the laws of the State of Illinois for an appeal from the assessment of said tax as aforesaid by the defendant and his predecessor in office, and that there is no provision in said law whereby the fixing of said tax as aforesaid may be reviewed by a court; that it is the duty of the defendant, on the failure of plaintiff or any foreign corporation to pay the franchise tax so assessed, to forfeit the right of such corporation to do business in the State of Illinois and to make illegal and unlawful under the laws of the State of Illinois any business, contract made by the plaintiff or such corporation in said state and to enforce divers penalties, including criminal prosecution, against the plaintiff, its officers or employes on the ground that it has failed to pay said tax, to comply with the General Corporation Act, and is unlawfully doing business in Illinois; that the agent of the Secretary of State in charge of the assessment of said taxes has informed plaintiff of the purpose of the defendant to collect said tax of $1,000.00 as so assessed, and on the nonpayment thereof it is the purpose of the defendant to enforce all of the forfeitures and penalties as provided by the laws of the State of Illinois" (Rec., pp. 9-10).

"Plaintiff further shows to the Court that, because of its failure and refusal to pay said franchise tax as assessed against it, said defendant **threatens, intends to and will take steps to revoke and terminate the authority of the plaintiff to do business in the State of Illinois** and institute proceedings to collect said tax and to enforce the penalties provided by said Gen-

eral Corporation Act against it, its officers and employes, and that, by reason of the duties and powers placed upon the defendant in and for the collection of said tax and in the enforcement of said penalties, the plaintiff is threatened with great and irreparable injury, for which it cannot be adequately compensated at law and has no adequate remedy at law.

"Plaintiff further shows unto the Court that it cannot obtain relief or protection elsewhere than from the Court through the exercise of a writ of injunction to restrain said unlawful acts on the part of the defendant.

"And, in order that the plaintiff, its officers, employes and property, may be protected against the unlawful and unjustifiable threatened acts and actions of the defendant, the plaintiff respectfully prays" (Rec., p. 12).

Diversity of citizenship is alleged, it being averred that the plaintiff St. Louis Southwestern Railway Company is a citizen and resident of the State of Missouri and that the defendant William J. Stratton, Secretary of State, is a citizen and resident of the State of Illinois (Rec., pp. 3-4).

It is further averred that:

"Plaintiff represents that this is a suit in equity, brought to restrain the enforcement, operation and execution of the statutes of the State of Illinois, known as the General Corporation Act of Illinois, and particularly sections 105, 107, 92 and 114 thereof,

which provide for the payment of a minimum franchise tax of $1,000 by plaintiff, based solely on plaintiff's total issued capital stock, on penalty of forfeiting plaintiff's authority to do business in the State of Illinois, and the suffering by plaintiff and plaintiff's employes by divers fines and penalties, by restraining an officer of said state, namely, the defendant William J. Stratton, Secretary of State of the State of Illinois, from, after the payment of a tax of $135.21 by plaintiff, enforcing the aforesaid provisions of the said statute, and foregoing provisions thereof, as sought to be applied to the plaintiff, are void and unconstitutional under the provisions of the Constitution of the United States of America heretofore mentioned; that this suit is brought to prevent the defendant, under color of the said Illinois statutes, from depriving it from privileges and immunities secured to it by the Constitution of the United States of America, and to prevent the defendant from depriving plaintiff under color of the aforesaid statutes of rights, privileges and immunities secured to the plaintiff by the Constitution of the United States of America; further, that this is a suit of a civil nature, being a bill in equity filed by the plaintiff, a citizen and resident of the State of Missouri, against the defendant, a citizen of the State of Illinois, to enjoin the defendant, his agents, attorneys and employes from enforcing or undertaking to enforce against the plaintiff certain penalties provided by the statute of the State of Illinois, account plaintiff's failure to pay the annual license fee or franchise tax heretofore referred to; **that there is involved in this controversy the right and authority of plaintiff to do business in the State**

of Illinois, the value of which right, exclusive of interest and costs, exceeds the sum of $3,000, and is of a worth to the plaintiff of the value of, to wit, $5,000; and in this, that the defendant seeks to enforce the plaintiff to pay a franchise tax in the sum of $1,000, together with an additional penalty of 5 per cent per month after August 1, 1927, which tax and penalties are made a first and prior lien upon the property of the plaintiff in the State of Illinois; that there is involved the right and authority of the plaintiff to do and transact business in the State of Illinois, which business and penalties would exceed the amount of $3,000; and that to revoke the authority of the plaintiff to do business in the State of Illinois would damage the plaintiff in the large sum of, to wit, $5,000 or more'' (Rec., pp. 10-11).

Prayer of Bill.

In addition to the prayer for summons and to restrain the assessment of franchise taxes for subsequent years, as well as for the year in question, on the scale of minimums provided for in Section 107 of the Corporation Act, the prayer of the bill of complaint is that:

"That an injunction issue herein, perpetually enjoining the defendant William J. Stratton as Secretary of State of the State of Illinois, his successors, employes, clerks, agents, attorneys, and all persons acting for or under his instructions, from in any manner whatsoever revoking or taking steps to revoke the certificate of authority of the plaintiff to do business within the State of Illinois, because or on account

of the refusal of plaintiff to pay the franchise tax of $1,000, as aforesaid, or any part thereof in excess of $135.21 assessed by him against the plaintiff.

"That an injunction issue herein, perpetually enjoining the said defendant William J. Stratton, as Secretary of State of the State of Illinois, his successors, employes, attorneys, agents and all persons acting for or under his **instruction, from hindering or forbidding the plaintiff to transact business in the State of Illinois, or from instituting any proceedings or filing any complaint, either at law or in equity, or in any manner taking any steps whatsoever to enforce any of the penalties, forfeitures or prohibitions against the plaintiff, its officers and employes, on account of the refusal of the plaintiff to pay said franchise tax of $1,000 aforesaid**, or any part thereof, in excess of $135.21, as assessed against it" (Rec., p. 13).

We deem the several statutory provisions to be pertinent.

"Sec. 92. **Revocation of Certificate of Authority to Do Business—Grounds.**—The certificate of authority of a foreign corporation, subject to the provisions of this act, may be revoked by the Secretary of State: * * *

"(6) Upon failure, neglect or refusal to file an annual report, as required by this act, or upon failure, neglect or refusal to pay the franchise tax assessed against it on or before the 31st day of July of the year in which such franchise tax becomes due and payable."

(See pages 41 and 42 of Appendix to Original Brief.)

The bill further avers, the Secretary of State threatened and, unless restrained, would revoke appellee's certificate of authority to do business in Illinois (Rec., p. 12).

By section 94 (Appendix, pages 42-43) unlicensed foreign corporations, doing business in Illinois, are denied permission to maintain any suit in the courts of the state and are made liable to a penalty of not more than $1,000.00.

By section 128 (Appendix, page 53) it is provided that:

> "Sec. 128. **Payment of Franchise Tax and Fees as Condition to Doing Business or Maintaining Suits.**— No corporation required to pay a franchise tax or fee under the laws of this state shall transact any business in this state or maintain any action at law or suit in equity unless such corporation shall have paid such franchise tax."

By section 116 (Appendix, pages 51-52) it is provided that the Secretary of State "**shall**" issue a warrant, directed to the Sheriff of any county, to be levied upon any personal property of the delinquent corporation, and that the property so levied upon be sold to satisfy the tax. The Sheriff is required to execute such warrant.

The decree recited:

> "and upon consideration of the verified bill of complaint and the affidavit of W. A. Conaway, in support thereof, and after hearing evidence, both in support

of and in opposition to said application" (Rec., p. 27) * * *

"It is ordered, adjudged and decreed * * * that the defendant, William J. Stratton, Secretary of State of the State of Illinois, * * * be enjoined pending further order herein, from forfeiting the right of plaintiff to transact business in the State of Illinois, or in any manner taking any steps whatsoever to enforce any of the penalties, forfeitures and prohibitions against the plaintiff" (Rec., p. 27) * * *

"It is further ordered, adjudged and decreed that the motion by the defendant to dismiss the bill of complaint be denied; and the defendant having elected to stand by his motion to dismiss the bill of complaint for want of equity, it is further ordered, adjudged and decreed that a permanent injunction be awarded the plaintiff as prayed for in said bill of complaint and as hereinbefore is set forth" (Rec., p. 28).

BRIEF OF ARGUMENT.

Jurisdiction—As to the "Amount Involved in the Suit."

In an injunction suit to protect a property right, in determining the amount involved in a suit, the value of the property, or right to be protected, or the extent of the injury to be prevented, the value of the "object" sought to be accomplished, is the amount involved.

Packard v. Banton, 264 U. S. 140, at 142, 44 Sup. Ct. R. 257, 68 L. ed. 596;
McNeill v. Southern R. R., 202 U. S. 543, 26 Sup. Ct. R. 722, 50 L. ed. 1142;
Hunt v. N. Y. Cotton Exchange, 205 U. S. 322, 51 L. ed. 821;
Bitterman v. Louisville & Nashville R. R. Co., 207 U. S. 205, 52 L. ed. 171;
Glenwood Light Co. v. Mutual Light Co., 239 U. S. 121, 60 L. ed. 174, 36 Sup. Ct. 30;
First National Bank of Columbus v. Louisiana Highway Com., 264 U. S. 301, 68 L. ed. 701, 44 Sup. Ct. 340.

A suit to enjoin the collection of taxes on the ground of perpetual contract of exemption from taxation involves the amount essential to sustain federal jurisdiction, where the contract right exceeds the statutory amount, although the particular tax assessed and levied is less than that sum.

Berryman v. Board of Trustees, 222 U. S. 334, 56 L. ed. 225.

The action of appellant in acquiescing to the jurisdiction of the District Court strengthens the inference to be drawn from the facts of record to sustain federal jurisdiction.

City of Gainesville v. Brown-Crummer Investment Co. et al., 277 U. S. 54, 72 L. ed. 781.

Where the jurisdictional value is controverted as a matter of fact, then a liberal presumption will be indulged in favor of the plaintiff's evidence.

Wetmore v. Rymer, 18 Sup. Ct. 293, 169 U. S. 115, Op. 127, 42 L. ed. 682.

The sum claimed in the plaintiff's pleading as being the amount in controversy ordinarily controls and the suit should not be dismissed by a federal court, as not substantially involving an amount sufficient to give jurisdiction, unless the facts pleaded create a legal certainty of such conclusion, or it is not legally possible for such value to be involved.

Barry v. Edmunds, 116 U. S. 550, 29 L. ed. 729, Op. 732, 6 Sup. Ct. 501;

Vance v. W. A. Vandercook Co., 170 U. S. 468, 42 L. ed. 1111, 18 Sup. Ct. 645;

Smithers v. Smith, 204 U. S. 632, 51 L. ed. 656, 27 Sup. Ct. 297;

Put-in-Bay Waterworks L. & R. Co. v. Ryan, 181 U. S. 409, Op. 430-431, 45 L. ed. 926, Op. 937;

Ludwig v. Western Union Tel. Co., 216 U. S. 146, 30 Sup. Ct. R. 280, 54 L. ed. 423 ..... 12, 28, 29
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Ohio Tax Cases, 232 U. S. 576, at 587, 34 Sup. Ct. R. 372, 59 L. ed. 738, at 743 ..... 12, 28
Packard v. Banton, 264 U. S. 140, at 142, 44 Sup. Ct. R. 257, 68 L. ed. 596 ..... 10, 20
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ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation, Appellee.

No. 178.

Appeal from Statutory District Court of the United States for the Southern District of Illinois, Southern Division.

APPELLEE'S ADDITIONAL BRIEF AND ARGUMENT COVERING QUESTIONS OF FEDERAL AND EQUITY JURISDICTION.

MAY IT PLEASE THE COURT:

Federal jurisdiction is claimed because this is a suit of a civil nature in equity, the matter in controversy arising under the Constitution of the United States and exceeding the sum or value of three thousand ($3,000.00) dollars, and there also being a diversity of citizenship between the parties to the action (Rec., p. 4).

Blackburn v. Portland Gold Min. Co., 175 U. S. 571, Op. 574, 44 L. ed. 276, Op. 278;

Deputron v. Young, 134 U. S. 241, 33 L. ed. 923, Op. 929;

Wetmore v. Rymer, 169 U. S. 115, 42 L. ed. 682, 18 Sup. Ct. 293.

Jurisdiction as a Court of Equity.

Plaintiff has no adequate remedy at law. There is no provision under Illinois law for a judicial review of the franchise tax assessments, or for a recovery after payment of the tax assessed, and hence no remedy at law for relief or protection from the penalties provided for failure to pay, or to keep Secretary of State from revoking license to do business in Illinois, or restraining the various other penalties and forfeitures provided by the Illinois law.

Air-Way Corp. v. Day, 266 U. S. 71, 71 Sup. Ct. R. 85, 89 L. Ed. 10, at 12;

Ohio Tax Cases, 232 U. S. 576, at 587, 34 Sup. Ct. R. 372, 59 L. Ed. 738, at 743;

Ludwig v. Western Union Tel. Co., 216 U. S. 146, 30 Sup. Ct. R. 280, 54 L. Ed. 423.

ARGUMENT.

Federal Jurisdiction—As Affected by the "Amount Involved in the Suit."

In this case, for the purpose of determining federal jurisdiction, the sum or value of the amount in controversy is not alone the difference ($864.79) between the tax demanded by the Secretary of State and the tax offered to be paid by appellee. The demand by the Secretary of State of payment of such disputed item (and his threatened actions if not paid) is the reason which prompted appellee to institute this suit. By reason of appellee's nonpayment of such amount the Secretary of State threatened to do, and would (unless restrained) have done, serious and irreparable injury to appellee's property rights. This suit was brought for the purpose of enjoining such threatened injuries. The rights sought to be protected and/or the amount of the damage which the threatened injuries would have done to appellee, the value of the real "object" sought to be obtained, is the sum or value involved in this suit.

The sum claimed in plaintiff's pleading as being the amount in controversy ordinarily controls and the suit will not be dismissed, on the pleadings, as not substantially involving an amount sufficient to give federal jurisdiction unless the facts pleaded create a legal certainty of such conclusion, or it is not legally possible for such a value to be involved.

"In Barry v. Edmunds, 116 U. S. 550, it was held that a suit cannot properly be dismissed by a Circuit Court of the United States as not involving a controversy within the jurisdiction of the Court unless the facts, when made to appear on the record, create a legal certainty of that conclusion."

Deputron v. Young, 134 U. S. 241, 33 L. Ed. 923, Op. 929;
See other cases cited in Brief.

We submit that no such certainty exists or conclusion can be drawn in this case, and that, on the contrary, this controversy clearly involves the jurisdictional amount in the following respects:

1. The Secretary of State threatened to and would (unless restrained) have revoked appellee's certificate of authority to do business in the State of Illinois (Rec., p. 12). The prayer of the bill seeks to restrain such threatened action (Rec., p. 13). The bill charges that the value to appellee of this authority exceeds the sum or value of $3,000.00, exclusive of interest and costs (Rec., p. 11). Appellee had paid admission fees on $5,500,000.00 of its capital stock, and, if revoked, to again secure the admission of that amount of its capital stock, it would be required to pay the State of Illinois at least $3,437.50, being an admission fee (1/20 or 1 per cent of $5,500,000.00) of $2,750.00, plus a franchise tax amounting to at least one-fourth of the admission fee, or $687.50. (See Sec. 129, Ill.

Stat., Appendix 53.) Appellee's right to do business would not expire until the year 1991 (sixty-four years), and it would until then retain this right without the payment of any additional admission fees (unless it brought additional property and business into the state). Even though appellee repurchased its right of admission into Illinois, it must in the succeeding year again submit to such unlawful demand or again suffer its permit to be forfeited. This process would be repeated for sixty-four years, unless appellee each year paid the unlawful tax. Surely the right to be free from such unlawful exactment is of a value exceeding $3,000.00. Furthermore, appellee's right or authority to do business in the State of Illinois had a value in excess of the cost of repurchasing the same. If revoked appellee could not lawfully transact any local business, which amounted to $2,868.30 in the preceding calendar year, nor maintain any action in the Illinois courts. If, after its certificate of authority had been revoked as threatened, appellee had transacted any local business in Illinois, it would have been subject to a fine of not exceeding $1,000.00.

If revoked, appellee's corporate name would be subject to appropriation by some other corporation.

All of the foregoing threatened results and damage may be properly inferred from the averments of the bill.

Furthermore, appellee's specific averment that to revoke its certificate of authority to do business in Illinois would damage it to the extent of "$5,000.00 or more"

(Rec., p. 11) would, if an issue of fact had been raised thereon (its truthfulness was admitted by the motion to dismiss), have permitted proof. Evidence of items of damage, not susceptible of direct inference from the bill, would have been competent (or, if necessary, the bill could have been amended).

Many situations which would result in great damage to appellee, if its authority to do business in Illinois be revoked, will readily occur to the Court. For example, such a happening might constitute breach (under the terms) of valuable leases or contracts held by appellee, or a default under mortgages given by appellee. Proof of such matters would have been proper if an issue of fact had been raised as to the amount of damage appellee would sustain by reason of its authority being revoked.

2. Appellee seeks to restrain the assessment of franchise taxes against it on the basis of the scale of minimums of section 107, not only for the year July 1, 1927, to June 30, 1928, but for all subsequent years (Rec., pp. 12-13). Such was one of the "objects" of the bill. There is involved approximately $864.79 annually for sixty-four years—that is, until appellee's certificate of authority expires in the year 1991. The sum involved is such sum as, when capitalized, will, for sixty-four years, produce annually such an amount. Manifestly, it will many times exceed $3,000.00.

3. Appellee seeks to enjoin the Secretary of State "from hindering or forbidding the plaintiff to transact business

in the State of Illinois, or from instituting any proceedings or filing any complaint, either at law or in equity, or in any manner taking any steps whatsoever to enforce any of the penalties, forfeitures or prohibitions against the plaintiff, its officers and employes" (Rec., p. 13). Among other things, the Illinois Statutes, Sec. 116 (Appendix, pp. 51-52), it is provided that the Secretary of State "**shall**" issue a warrant, directed to the Sheriff of any county, to be levied upon any personal property of the delinquent corporation, and that the property so levied upon be sold to satisfy the tax. The Sheriff is required to execute such warrant.

The record (p. 17) shows that appellee had $15,000.00 in stock and securities, and $786,196.00 in rolling stock, all of which is personal property, in Illinois, and which could be subjected to such a warrant.

We say that the amount involved in this suit is the aggregate sum of all the foregoing items of loss and damage.

The Statutory District Court disposed of this case on motions for an interlocutory injunction and to dismiss for want of equity only (Rec., p. 27). Appellant has never questioned federal jurisdiction. If he had questioned such jurisdiction, the facts on which it is based might have been repleaded and better phrased.

In considering the inferences to be drawn from the matters pleaded in the bill of complaint, the Court may fairly consider the fact that jurisdiction has not heretofore been questioned.

"Of course a question of jurisdiction cannot be waived. Jurisdiction should affirmatively appear, and the question may be raised at any time (citing cases). Yet the action of the party in acquiescing may strengthen inferences of necessary facts from the record to sustain the jurisdiction, in the absence of a showing to the contrary."

Gainesville v. Brown-Crummer Invest. Co., 277 U. S. 54, Op. 59, 72 L. Ed. 781, Op. 783-4.

In determining whether a jurisdictional amount is involved, the Court should liberally construe the matters pleaded. Even where the jurisdictional value is a controverted matter of fact, the evidence is liberally construed in order to support federal jurisdiction.

In the case of Wetmore v. Rymer, 18 Sup. Ct. 293, 169 U. S. 115, Op. 127, 42 L. ed. 682, the Court, considering the evidence offered in support of jurisdiction, after reciting that the plaintiff alone presented evidence on such matter, said:

"A liberal presumption ought, therefore, to be indulged in favor of the plaintiff's evidence in that regard" (Op. 127).

The averments of appellee's bill of complaint are entitled to a similar indulgence.

It is the well-settled rule that in an injunction suit to protect a property right the value of such right, or the

extent of the injury to be prevented and/or the value of the "object" sought to be accomplished is, in determining federal jurisdiction, the amount involved. There are many cases similar to this, i. e.:

The Southern Railroad Company billed McNeill for $146.00, account demurrage. In consequence to his refusal to pay the demurrage the railroad company refused to deliver cars on a private spur track, by means of which it had heretofore served him, and notified McNeill it would make deliveries only on the public team track.

McNeill made complaint to the North Carolina Corporation Commission, which entered an order requiring the railroad company, upon the payment of the freight charges, to make delivery of certain interstate cars on the private spur track heretofore mentioned. The railroad filed a bill in equity in the United States court to enjoin the enforcement of the order of the Commission and to enjoin actions to recover penalties or damages on account of the violation of such order. Federal jurisdiction was questioned. On appeal this Court said:

> "In the court below it would seem to have been claimed that the $146.00 demurrage was the question at issue. However this may be, as said by the trial court, although the demurrage dispute may have been the origin of the litigation, there is involved in the controversy presented by the bill, not only the right to enforce against the railway company the payment of statutory penalties much in excess of $2,000.00, but

also the right of that company to carry on interstate commerce in North Carolina without becoming subject to such orders and directions of the Corporation Commission, which so directly burdened such commerce as to amount to a regulation thereof. This latter right is alleged in the bill to be of the necessary jurisdictional value, the averment was supported by testimony, and the Master and the court below have found such to be the fact'' (Op. 558).

McNeill v. Southern R. Co., 202 U. S. 543, Op. 558, 50 L. ed. 1147.

There was a similar holding in the case of Packard v. Banton, 264 U. S. 140, Op. 142, 68 L. ed. 597, where the Court said:

''Appellees insist that the District Court was without jurisdiction because the matter in controversy does not exceed the value of $3,000.00 (Judicial Code, Sec. 24, Subd. 1). The bill discloses that the enforcement of the statute sought to be enjoined will have the effect of materially increasing appellant's expenditures, as well as causing injury to him in other respects. The allegations, in general terms, are that the sum or value in controversy exceeds $3,000.00, which the affidavits filed in the lower court tend to support; that appellant is the owner of four motor vehicles, the income from which would be reduced, if the law be enforced, to the extent of $18.50 each per week, and that his business would otherwise suffer. The object of the suit is to enjoin the enforcement of the statute, and it is the value of this object thus sought to be

gained that determines the amount in dispute" (citing cases) (Op. 142).

In this case the enforcement of the Illinois statute "will have the effect of materially increasing" appellee's expenditures account franchise taxes to the extent of $864.00 per year, as against $18.50 per week in the aforementioned case.

In the decided cases it is frequently stated that the jurisdictional amount is to be tested by the object to be "obtained" by the suit. The object to be obtained by this suit is to prevent the Secretary of State of Illinois from arbitrarily revoking applicant's authority to do business in the state and from inflicting divers penalties and forfeitures by reason of its failure during the year in question and during succeeding years to pay a tax which is unlawfully demanded. There can be no presumption that the Legislature will change the law. If the law remains the same, then one of the objects to be secured would be relief annually for a period of sixty-four years from a tax of approximately $850.00 per year.

The New York Cotton Exchange sued to enjoin one Clarence P. Hunt from receiving and using quotations of sales on such exchange until he had acquired the right from the Exchange or from one of the telegraph companies authorized to distribute such quotations. It was claimed there was no federal jurisdiction because the right to use such quotations could be acquired by purchase from the

telegraph companies for less than the jurisdictional amount. This Court upheld the plaintiff's contention that the amount involved was the value of the object sought to be accomplished by the bill, viz., to preserve the right of the Exchange to control the quotation, which right was averred to exceed the jurisdictional amount.

Hunt v. New York Cotton Exchange, 205 U. S. 322, 51 L. Ed. 821.

The Glenwood Light & Water Company brought suit against the Mutual Light & Power Company in the federal court to restrain the defendant from maintaining its poles and wires on the same side of the street as that occupied by the complainant's poles and wires, and in such proximity as to injure or endanger the property of the complainant and its customers. Jurisdiction was questioned on the ground that the cost of removing the defendant's poles and wires (about $500.00) did not equal the jurisdictional amount. This Court held that the amount of the controversy was not simply the cost of removing the poles, but was the value to the complainant of the right to conduct its business free from the wrongful interference by the defendant company. This Court upheld jurisdiction, saying:

> "We are unable to discern any sufficient ground for taking this case out of the rule applicable generally to suits for injunction to restrain a nuisance, a continuing trespass, or the like, viz., that the jurisdictional

amount is to be tested by the value of the object to be gained by complainant. The object of the present suit is not only the abatement of the nuisance, but (under the prayer for general relief) the prevention of any recurrence of the like nuisance in the future."

Glenwood L. & W. Co. v. Mutual L. H. & P. Co., 239 U. S. 121, 60 L. Ed. 174, at 176.

In practically every decision involving the jurisdictional amount, in injunction suits, the Court refers to jurisdiction as being based on the object to be accomplished by the bill. Indeed, is not one of the objects of the bill here to prevent the Secretary of State of Illinois from annually hereafter applying an illegal scale of minimums, which, if paid, would annually result in an unlawful exaction from appellee. One of the objects of the bill is to force the Secretary of State to assess appellee's annual franchise tax on the basis of its capital stock, represented by property and business in Illinois.

In the Glenwood case the actual cost of removing the obstructing poles and wires would have been about $500.00. Jurisdiction was sustained because the plaintiff company sought to be relieved not only of that particular $500.00 obstruction, but from other obstructions which the defendant company might in the future put upon the streets—the value of such freedom being in excess of $2,000.00. Appellee here is striving to avoid not only the excess tax for the year 1927, but also the excess tax for all subsequent years and in its bill prays that the defendant be enjoined

"from hereafter at any time assessing any franchise tax against the plaintiff, based on the minimum scale fixed by section 107" (Rec., pp. 12-13).

In the case of Scott v. Donald, 165 U. S. 107, at 115, 41 L. Ed. 648, at 654, one James Donald brought a suit to enjoin the illegal seizure of liquors planned to be imported by him into the State of South Carolina. It was his purpose to, from time to time, import such liquors. The value of any individual importation at any one time would not equal the jurisdictional amount. However, the aggregate of such importations to be made from time to time and the value of the plaintiff of the right to make such importations exceeded the jurisdictional amount. It was held that the federal court had original jurisdiction. Is there any substantial difference between Donald's rights to import, free from the threat of illegal seizures from time to time made, and appellee's right to continue to transact business in Illinois, free from periodical illegal tax assessments on the basis of the scale of minimums of Section 107 of the Illinois Corporation Act?

In a suit by a railroad company to enjoin the scalping and resale of nontransferrable tickets—the value of the business sought to be protected was held to be the test, not the value of the tickets sold at any one time or from time to time.

Bitterman v. Louisville & Nashville R. R. Co., 207 U. S. 205, 52 L. Ed. 171.

The board of trustees of Whitman College sued Berryman and other taxing officials to enjoin the collection of taxes amounting to $946.32 upon the property of Whitman College. The trustees contended there was a perpetual contract exempting the college property from taxation and sought to prevent the impairment of said contract by a decree recognizing such exemption and restraining present and future taxation. The object was to escape a tax bill of approximately $946.00, not only for the year in question, but for subsequent years. Clearly, such object, if attained, had a value of more than $3,000.00. Federal jurisdiction was upheld.

Berryman v. Board of Trustees of Whitman College, 222 U. S. 334, 56 L. Ed. 225.

There is no substantial difference between the Berryman case and this. Appellee claims the right to be free from the assessment of a franchise tax on the scale of minimums of section 107. As long as the due-process, commerce and equal-protection provisions remain in the Federal Constitution appellee is entitled to such right, and, if its contention is correct on the merits, then never can appellant assess franchise taxes against it on the basis objected to.

There is involved approximately $860.00 per year for sixty-four years, as well as the value of appellee's authority to do business in Illinois, and as well as the damage

which appellee would suffer if its right to do business in Illinois should be revoked.

To be worth $3,000.00, appellee's local business need not return over $180.00 net annually. Can the Court say that it is not legally possible for appellee's local annual business of, say, $2,800.00, to net $180.00 or more?

Nothing could be more certain than that, unless appellee secures injunctive relief, it will, every year, be faced with the same illegal tax.

It is the object of the bill to restrain the defendant from revoking appellee's authority to do business in Illinois; from enforcing divers penalties and forfeitures, and from at any time thereafter assessing a franchise tax against appellee on the basis of an illegal sale of minimums. Manifestly, the value of such objects exceeds $3,000.00.

Jurisdiction as a Court of Equity.

There is no method provided by the law of Illinois whereby appellee's franchise tax, as assessed by the Secretary of State, could be reviewed. The authority of the Secretary of State, in such respect, is arbitrary. So is the authority conferred upon the Secretary of State by the Illinois statute to revoke appellee's certificate of authority to do business in Illinois.

It is pleaded in the bill that there is no method provided by the laws of Illinois for an appeal from the assessment of the tax or for the review of its legality (Rec.,

pp. 9 and 10), and that if the tax was not paid in the amount assessed, that appellant "threatens, intends to and will take steps to revoke and terminate the authority of plaintiff to do business in the State of Illinois, and institute proceedings to collect said tax, and to enforce penalties provided by the General Corporation Act against it * * *, the plaintiff is threatened with great and irreparable injury for which it cannot be adequately compensated, and has no adequate remedy at law" (Rec., p. 12).

Under such circumstances, we do not know of any relief which appellee had at law. It must have either submitted to and paid the unlawful tax or else appealed to a court of equity to enjoin the threatened injury.

If the Secretary of State had not been restrained and if he had revoked appellee's authority to do business in Illinois and enforce the divers penalties and forfeitures provided by law, the injury to appellee would have been irreparable. The State of Illinois cannot be sued, and the Secretary of State would not be personally liable. Even though he were personally liable, a remedy by suit against the Secretary of State would not be an adequate remedy.

In the case of Air-Way Electric Appliance Corporation v. Day, 266 U. S. 71, Op. 79, 69 L. ed. 169, Op. 175, equity jurisdiction was invoked and sustained in a case similar to this, on the ground that the plaintiff was threatened with irreparable injury through the enforcement of the

coercive provisions of an Ohio statute, which statute is practically the same as the Illinois statute here involved.

Where the bill alleges threatened irreparable injury, through the enforcement of penalties, and coercive features of a statute, sufficient ground for equity jurisdiction is laid.

> Ohio River & W. R. Co. v. Eitty, 232 U. S. 576, Op. 587, 58 L. ed. 737, Op. 743.

The Secretary of State of Arkansas threatened to issue a proclamation in his official capacity under authority of a state statute forbidding the Western Union Telegraph Company (under the heavy penalty prescribed by the statute) to continue to do a local business in the State of Arkansas. The Telegraph Company sought to restrain such action and to restrain the revocation of its authority to do business in the State of Arkansas. Equity jurisdiction was questioned and this Court held grounds for equitable relief to exist. The penalties threatened were very similar to the penalties threatened against appellee in this case.

The Court said:

> "In order to prevent the contemplated or threatened injury to the company, the court below properly made a decree perpetually enjoining the appellant, as Secretary of State, his agents and attorneys, from

making proclamation that the Telegraph Company has no authority to continue doing business in Arkansas" (Op. 164).

Ludwig v. Western Union Telegraph Co., 216 U. S. 146, 54 L. ed. 423.

We respectfully submit that there is federal and equity jurisdiction of this cause.

Respectfully submitted,

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